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Supreme Court of the United States.

OCTOBER TERM, 1972.

No.

CAMPO CORPORATION ET AL.,
Petitioners,
v.
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS.

The petitioners are Campo Corporation, a Massachusetts corporation, Jean C. Campopiano of Lawrence, Essex County, Massachusetts, and John F. D'Errico of Providence, Rhode Island. The petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts entered in this proceeding on June 14, 1972, and an entry was made in the office of the Clerk of Courts of the Superior Court of Essex County on June 15, 1972, Docket No. 16517, affirming the final decree with costs of appeal.

Opinion Below.

The opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts appears in the appendix hereto at page 13.

Jurisdiction.

The judgment of the Supreme Judicial Court for the Commonwealth of Massachusetts was entered on June 14, 1972, and this petition for certiorari is filed within 90 days of that date.

Question Presented.

The question presented in this case is whether a city, having the power to take property by eminent domain for public purposes, by taking preliminary steps to take such property by advertising a land taking notice for a hearing to vote on the proposition that the city acquire by eminent domain proceedings, pursuant to provisions of chapter 576 of the Massachusetts Acts of 1963, amended by chapter 825 by said Acts of 1963, the fee in nine parcels of land with the buildings thereon, which included the petitioners' property, and by voting a parking loan of $600,000 to pay for such properties, including the petitioners' property, and dragging out these proceedings for two years so that petitioners' property is vandalized and the value of said property destroyed, and refusing to complete the eminent domain proceedings, is in violation of articles V and XIV of the Amendments of the Constitution of the United States for the reason that the petitioners were deprived of property rights *without due process of law.*

Constitutional Provisions Involved.

United States Constitution, Fifth Amendment:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Fourteenth Amendment, section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case.

1. On August 1, 1963, and for many years prior, the petitioners owned property known as the Capitol Theatre located at 139 Common Street in the city of Lawrence, Essex County, Massachusetts. Said property represented an investment of $328,438. On August 1, 1963, your peti-

tioners leased the premises to a bona fide lessee on the following terms:

(1) Term of 21 years at a graduated rental of $12,000 to $20,000 per year, the rent to increase $1,000 per year for the first 8 years;

(2) The lessees were to make a 20-year first mortgage loan at 5% interest per annum of $50,000 to the lessor, the proceeds of said loan to be applied to the payment of the real estate taxes due the City of Lawrence;

(3) The lessees were to withhold $2500. per year for payment on principal plus the interest of 5% due on the unpaid balance of the loan from the rental return due the lessor;

(4) The lessees agreed to spend a minimum of $15,000 for improvements such as a new roof, a new painting within and a minimum of $5,000 additional for any minor structural changes to be agreed upon. The total sum of $20,000 for repairs and improvements would be assumed 50% by each party. The lessors agreed to pay the said 50% from the rent accruing to the lessors during the last 5 years of the term of the lease;

(5) The lessees were given the option to purchase the property after ten years, at the agreed price of $200,000.

(6) The lessees agreed to pay the first month rent of $1,000 in advance upon execution of the lease and the first day of the beginning of the term of the lease.

(7) The lease was to begin January 1, 1964;

(8) The lessees reserved the right to cancel the lease if, between August 1, 1963, the date of the execution of the lease and August 1, 1964, the City of Lawrence should want to seize by eminent domain the property

of the Plaintiffs for "Off-Street Parking", and the said Plaintiffs as the lessors of said lease, agreed to reimburse any losses incurred as a result of said seizure.

Your petitioners further say that on or about August 1, 1963, your petitioners owed the city of Lawrence approximately $38,000 for taxes in arrears, water liens and assessments and that the said real estate was otherwise free from all encumbrances.

The city of Lawrence on September 9, 1963, considered a Greater Lawrence Chamber of Commerce "Off-Street Parking Plan" and the city council voted to receive the report submitted by said chamber of commerce and refer it to the planning board for a determination as to whether the proposed parking area locations are in conformity with the summary master plan.

The city council of the city of Lawrence, at its regular meeting of September 16, 1963, received a petition from citizens, merchants and other residents to include in the chamber of commerce "Off-Street Parking Plan" the Capitol Theatre in order to enlarge the "Off-Street Parking Lot or Area" next to the said theater. The petition was referred to the planning board for the determination of conformity to summary master plan.

At the regular council meeting of September 30, 1963 and October 21, 1963, the city council received the reports from the planning board of the chamber of commerce master plan and the Capitol Theatre plan conformed with the objectives of the summary master plan.

On February 3, 1964, the city council gave notice of a public hearing to be held on March 2, 1964 on the proposition to acquire by eminent domain all the enumerated properties shown on exhibit "F," which is attached hereto. On said exhibit is listed the Capitol Theatre as one of the properties to be taken by eminent domain.

EXHIBIT "F"

In City Council
February 3, 1964

CITY OF LAWRENCE
LAND TAKING
NOTICE.

Notice is hereby given that a public hearing will be given by the City Council of the City of Lawrence, Massachusetts, beginning at 9:30 o'clock A.M., on Monday, March 2nd, 1964, in the City Council Room, City Hall, 200 Common Street, Lawrence, Massachusetts, on the proposition that the City Council acquire by Eminent Domain proceedings pursuant to provisions of Chapter 576 of the Massachusetts Acts of 1963, amended by Chapter 825 of said Acts of 1963, the fee in the following parcels of land with buildings thereon:

10-12 Jackson Street — Jackson Lumber Company
125-133 Methuen Street — Jackson Lumber Company
245-251 Methuen Street — Manzi Sales & Service Company
261 Methuen Street — Broadway Savings Bank
265 Methuen Street — Morris and Harry Shuman
227-283 Methuen Street — Elias Abdinoor
289-293 Methuen Street — Irene S. Kates
9 Franklin Street — James H. & William J. Bride
11 Hampshire Street — Maurice F. & Teresa M. Moriarty
139 Common Street—Campo Corporation (Capitol Theatre)

The acquisition of the aforesaid parcels of land for the purpose of developing public Off-Street Parking Lots.

At the hearing the City Council will grant ample opportunity to all persons interested who wish to be heard.
City Clerk Instructed to Advertice

JOSEPH R. SMITH
City Clerk

On March 2, 1964, the city council held said hearing as advertised and voted "the parcels of property considered on this date be continued under advisement for an indefinite period for further study by the council members and to also permit time for the completion of other matters preliminary to the adoption of orders to take the various parcels."

The city council on March 9, 1964, voted to advertise for a $600,000—20-year loan order to provide a parking site including the petitioners' property and the said city of Lawrence did borrow $600,000 and proceeded to apply said funds for the purpose of acquiring by eminent domain the said eight properties including the petitioners' property.

On March 10, 1964, the lessees of the lease, under the cancellation provisions of said lease, cancelled said lease.

The cancellation of the lease was a direct result of the city council *voting definitely to take by eminent domain all the property in the chamber of commerce plan which now includes* also the plaintiffs' property for "Off-Street Parking."

On July 24, 1964, at a city council meeting, a land appraisal contract or contracts were authorized to appraise all the parcels of property involved for off-street parking purposes including the Capitol Theatre property.

From November 12, 1964, to September 20, 1965, at various council meetings, orders of taking by eminent domain were adopted for all the properties listed in exhibit "F" except the property of the petitioners. Further, between November 12, 1964 and September 20, 1965, at the various council meetings votes of authorization of payment for said properties taken and for payment of miscellaneous and connected items with the parking plan were made from the $600,000 parking loan of 1964.

Further a tax lien case against your petitioners' property which had been filed in 1959 was continued in October,

1963, to give your petitioners the opportunity to carry out the provisions of the lease in re-financing.

From March 4, 1964, after the cancellation of the lease, to October, 1965, your petitioners' property was vandalized causing great damage.

On November 1, 1965, the city council of the city of Lawrence failed to act and definitely indicated no intention of completing the final steps of taking your petitioners' property.

2. Your petitioners brought a bill in equity on July 22, 1966. It was tried before a master in May, 1969.

The hearing before the master was a travesty of justice. The master was biased and incompetent. Your petitioners, as plaintiffs in said suit, introduced all the evidence in the case. The defendant city of Lawrence rested without introducing any evidence. Your petitioners made offers of proof in order to introduce vital evidence which the master denied.

Your petitioners' objections to the final draft of the master's report was disregarded, a motion to vacate the order confirming the master's report was denied, and a motion for a new trial was denied. On July 20, 1970, your petitioners' appeal to the Supreme Judicial Court of the Commonwealth of Massachusetts was entered. See appendix, page 18.

Reasons for Granting the Writ.

1. The issue in this case was raised on petitioners' appeal from the final decree dismissing petitioners' bill July 3, 1970, in the Superior Court of Essex County and was presented in petitioners' appeal to the Supreme Judicial Court for the Commonwealth of Massachusetts, but the said respondent court failed to make any finding or give any opinion or decision on this question.

2. The petitioners have no redress or protection against unwarranted and vicious acts of a town or city exercising a power of eminent domain and then failing to complete the proceedings of eminent domain, thus destroying the value of the petitioners' property.

3. The decision of a city or town to hold up completion of taking the property by eminent domain for an unreasonably long time, thus destroying the value of said property and thus depriving your petitioners of their property rights was in violation of the due process clause of the Fifth Amendment.

For these reasons the writ of certiorari should be granted.

Discussion.

1. Your petitioners contend that the basis of the claim of having been denied of their property rights without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States is the sequence of events which took place from September 9, 1963, to November 1, 1965. At no time during this period was any question raised about the propriety or legality of taking your petitioners' property by eminent domain. During this entire period your petitioners' right of redemption was alive. The Land Court at all times protected your petitioners' ownership of their property from June, 1959, to February 9, 1966.

2. Petitioners' bill in equity filed in July, 1966, and heard before an incompetent and biased master, was a petition for redress and relief in behalf of your petitioners. Instead the master wrongfully interpreted the issue to be one where the defendant city of Lawrence did not have to take the property by eminent domain because the said city already owned it. The proceedings in the Land Court took place in February, 1966, when it was too late for the peti-

tioners to raise the necessary funds to pay the accumulated unpaid taxes which had risen from $38,000 in September, 1963, to $70,000 in February, 1966.

The petitioners lost their lease in March, 1964, when the city of Lawrence voted to take by eminent domain nine properties including your petitioners' property for off-street parking. Further the actions of the city council in dragging out the actual takings of the properties resulted in vandalism and plundering of petitioners' property so that its value was reduced.

3. Should the complex and technical rules of procedure of hearings before a master be the means of destroying equitable and basic rights of person and property? In the instant case the failure of your petitioners to do something in a matter of compliance with a technical rule in procedure in July, 1969, is used by the defendant city of Lawrence as the legal basis for an opinion by the lower court to destroy petitioners' property rights. The Supreme Judicial Court of Massachusetts affirmed the lower court decision because in its written opinion the court stated that "where all the evidence on which the master made his findings is not reported, the findings must stand unless mutually inconsistent, contradictory or plainly wrong." This technical rule is not applicable because 98 per cent of the evidence was exhibits and two per cent was oral evidence and that evidence the master did not believe although the 2 per cent oral evidence was consistent with evidence disclosed by the exhibits.

4. Your petitioners' motion for a new trial is based upon an affidavit of the appellant Jean C. Campopiano which was denied by Judge Macaulay in the Superior Court, Essex County, Massachusetts (App. pp. 15-17). This affidavit affirms petitioners' claim of the master's bias. The Supreme Judicial Court disregarded this motion completely.

Conclusion.

For the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts.

Respectfully submitted,

JEAN C. CAMPOPIANO,
Attorney for Petitioners.

Appendix.

COMMONWEALTH OF MASSACHUSETTS.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH,

At Boston, June 14, 1972.

IN THE CASE OF

CAMPO CORPORATION & others

v.

CITY OF LAWRENCE & others.

pending in the Superior Court for the County of Essex

ORDERED, that the following entry be made in the docket; viz.,—

Final decree affirmed with costs of appeal.

By the Court,

William M. Cloran, Asst. Clerk.

June 14, 1972.

BRIEF STATEMENT OF THE GROUNDS AND REASONS OF THE DECISION:

In their bill, the plaintiff Campo Corporation and the two individual plaintiffs as majority and minority stockholders allege a conspiracy by the defendants (the city of Lawrence, its mayor, and treasurer) to destroy the value of the corporation's property (land and a motion picture theatre) and a lease thereof to a third party. It was further alleged that the conspiracy was consummated by certain actions designed to create a belief that the city intended to take the property by eminent domain. The case was referred to a master who found as follows: that the movie

theatre closed in 1954; that the property "fell gradually into a state of disrepair and by 1964 was in an advanced state of dilapidation; that the corporation was in arrears in taxes beginning in 1951; that the property was subject to a final decree in a tax lien case whereby the right of redemption was permanently foreclosed; that the lease "was intended solely as a devise to artificially create a non existing value for use . . . in . . . anticipated dealings with the defendant City"; that negotiations were terminated "as a result of the great difference between the appraisal figures and the asking price"; and that the plaintiff corporation continually tried to convince the city council to take the land by eminent domain. The master concluded that "there was absolutely no impropriety nor misconduct of any kind or degree in the actions of the . . . City Council or of any of its individual members . . . [and] that in all actions concerning the . . . property the . . . Mayor . . . acted with propriety and in accordance with the duties and responsibilities of . . . [his] office." The master's report was confirmed by the Superior Court judge, and a final decree was entered dismissing the bill. Where all the evidence on which the master made his findings is not reported, the findings must stand unless "mutually inconsistent, contradictory or plainly wrong." *Spencer* v. *Rabidou,* 340 Mass. 91, 92. On this record consisting only of exhibits with no transcript of the oral evidence heard by the master, we cannot say that his findings were inconsistent or contradictory, much less plainly wrong.

PLAINTIFFS' MOTION FOR A NEW TRIAL

The Plaintiffs in the above entitled action move for a new trial on the following grounds:

1. The findings of the Master was against the evidence and against the law.

2. There was at the time of the hearing a conflict of interest on the part of the Master John T. Ronan of Salem, Massachusetts and one of the main Defendants namely former Mayor John F. Buckley of Lawrence and that as a result of this conflict of interest the master was biased, prejudicial and swayed by friendship. The Plaintiffs as a result did not receive a fair and impartial hearing, and the Plaintiffs were entitled under the statutes to a fair and impartial hearing.

Wherefore, the Plaintiffs move for a new trial.

CAMPO CORPORATION, ET ALS
By their Attorney,
JEAN C. CAMPOPIANO

AFFIDAVIT OF JEAN C. CAMPOPIANO IN SUPPORT OF THE ABOVE MOTION FOR A NEW TRIAL.

I, Jean C. Campopiano, attorney-at-law, of Lawrence, County of Essex, Massachusetts, do on oath depose and say:

1. John J. Buckley was Mayor of the City of Lawrence for fourteen years from January 1, 1952 to January 31, 1965.

2. That during said term of being mayor the said John J. Buckley was also for several terms Governor's Councilor, representing Essex County. That said Buckley was and still is a prominent and active member of the Democratic Party.

3. That the Master John T. Ronan, together with his brother, James T. Ronan and one Michael J. Harrington are members of the law firm of Ronan & Harrington of 59 Federal Street, Salem, Massachusetts.

4. That the said Ronan brothers, together with their associate, Michael J. Harrington, exercised great influence in the Democratic Party in Essex County and had so exercised great influence for the last ten years.

5. That said Michael J. Harrington, has been a member of the Massachusetts House of Representatives and during the hearing of this case was still a member of said House of Representatives.

6. That Michael Harrington was a cousin of Senator Harrington, a member of the Massachusetts Senate and also floor leader in the Senate for the Democratic Majority and is also a prominent Democrat of Essex County;

7. That John J. Buckley has wielded for many years and still wields great political influence in Essex County politics and as Governor's Councilor, was actually associated with the Ronans and the Harringtons in Democratic politics and jointly wielded great political power in Essex County politics.

8. That this equity suit was heard in the latter part of June, 1969 and during the course of these hearings Congressman Bates of Salem representing the 6th Congressional District died sometime in June, 1969 and in July a special election was called and for such election primaries were to be held on August 26, 1969. At the beginning of July 1969, Michael Harrington, associate of Master Ronan, became a Democratic candidate for Congress in the primaries.

9. During the last several years John J. Buckley was elected Register of Deeds for the Northern Essex District and said Buckley still retains great influence in Democratic politics in Essex County.

10. During the campaign for nomination conducted by Michael Harrington for early July to August 26, 1969, your Deponent says that upon information and belief that said Buckley contributed his political support to said Harrington, all these political activities taking place for the most part on or about or before the filing of the report by Master Ronan.

11. Your Deponent says that the conduct of the Master and his associate Harrington and the Defendant Buckley,

representing the City of Lawrence, was a breach of the standards for high qualifications of one to be appointed as a master.

12. That said Ronan further was not qualified not only because of prejudice and friendship for the Defendants but also because said Ronan in the experience and judgment of your Deponent based upon your Deponent's experience as a member of the bar of many years, was not qualified to act as a master.

JEAN C. CAMPOPIANO.

Essex ss. Lawrence, Mass.
October 23, 1969

Then personally appeared the above Jean C. Campopiano, known to me personally and made oath that the affidavit above subscribed to by him is true, before me.

Michael T. Stella
Notary Public

Filed October 23, 1969

July 3, 1970. After hearing, this motion, filed in this equity proceeding, is denied.

DONALD M. MACAULAY
Justice of Superior Court

FINAL DECREE DISMISSING BILL.

This cause came on to be further heard and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the bill be and hereby is DISMISSED.

By the Court, (Macaulay, J.)

DONALD E. NUTTING
Assistant Clerk

Entered July 3, 1970

PLAINTIFF'S APPEAL TO THE SUPREME COURT OF FINDINGS OF JUDGE MACAULAY DENYING PLAINTIFF'S MOTION TO VACATE ORDER CONFIRMING MASTER'S REPORT, PLAINTIFF'S REQUEST TO GRANT PLAINTIFF'S OBJECTIONS TO MASTER'S REPORT, PLAINTIFF'S MOTION FOR A NEW TRIAL AND THE GRANTING OF DEFENDANTS' FINAL DECREE AT HEARING HELD ON JULY 3, 1970 AT SALEM, ESSEX COUNTY SUPERIOR COURT

July 20, 1970

The Plaintiff in the above-entitled action appeals to the Supreme Court of Massachusetts the Findings of Judge Macaulay Denying Plaintiff's Motion to Vacate Order Confirming Master's Report, Plaintiff's Request to Grant Plaintiff's Objections to Master's Report, Plaintiff's Motion for a New Trial and the Granting of Defendants' Final Decree at Hearing Held on July 3, 1970, at Salem, Essex County, Massachusetts, Superior Court.

CAMPO CORPORATION
By its Attorney,
JEAN C. CAMPOPIANO

Filed July 20, 1970

CERTIFICATE BY TRIAL JUDGE IDENTIFYING ALL THE EXHIBITS ADMITTED IN THE ABOVE ENTITLED CASE FOR PRESERVATION AND PRESENTATION OF SAID EXHIBITS TO THE FULL SUPREME COURT

July 24, 1970

Upon hearing of the parties or upon ex-parte hearing from the Plaintiff, the trial judge certifies that the reproduction of the exhibits in the record would entail burdensome and unwarranted expense or would be impracticable,

the exhibits need not be so reproduced but may be presented to the full court at the time of argument or of submission on briefs. Upon making this certificate the judge is respectfully requested to make such orders as he deems necessary for the preservation and presentation of the exhibits to the full court. The identity of the exhibits together with any orders made in connection with its issuance shall be reproduced in the record and the following list of exhibits are hereby identified:

A. Plaintiff's Exhibits

1. Lease.
2. Land Court Record.
3. Special Report of Chamber of Commerce to City Council containing 15 printed pages with maps and graphs.
4. List of certified copies of Council Meetings of Lawrence City Council, hereafter identified by date and page number.

A. Volume 49, Year 1963

1. Page 253—Regular Meeting, Monday, September 9, 1963
   (a) Copy on Page 256.
2. Page 256—Regular Meeting, September 16, 1963
   (a) Copy statement of Campopiano in re: Petition
3. Page 287—Special Meeting, Monday evening, September 30, 1963.
   (a) Copy of the entire proceedings of this special meeting, Pages 287 and 288.
4. Page 296—Regular Meeting, October 14, 1963.
   (a) Page 297 in re: Petition received in opposition.
5. Page 302—Regular Meeting, October 21, 1963.
   (a) Page 303—copy "Off-Street Parking Conforms to Master Plan."

B. Volume 50, Year 1964

1. Page 20—Regular Meeting, January 27, 1964.
   (a) Page 23—copy Off-Street Parking Vote to consider proposal of C & C on Monday, February 3, 1964.
2. Page 25—Regular Meeting dated February 3, 1964.
   (a) Page 26—copy proceedings.
3. Page 57—Regular Meeting March 2, 1964.
   (a) Pages 57, 58 and 59—copy entire proceedings.
4. Page 64—Regular Meeting, March 9, 1964.
   (a) Page 65—loan authorization.
5. Page 126—Regular Meeting, May 11, 1964.
   (a) Page 127—copy loan orders to borrow $600,000.
6. Page 210—Special Meeting called by Mayor.
   (a) Pages 210 and 211—copy proceedings.
7. Page 380—Special Meeting, Wednesday, December 30, 1964 called by Mayor.
   (a) Copy entire proceedings.

C. Volume 51—Year 1964

1. Page 20—Regular Meeting, January 25, 1965.
   (a) Page 28—copy "Off-Street Parking" paragraph pertaining to Special Meeting to be called on January 29, 1965 and the four parcels to be taken.
2. Page 29—Special Meeting, January 29, 1969.
   (a) Page 29—copy entire proceedings.
3. Page 38—Special Meeting, February 5, 1965, on Friday.
   (a) Pages 38, 39 and 40—copy entire meeting.
4. Page 46—Regular Meeting, February 15, 1965.
   (a) Page 49—copy reference to Special Meeting to be held February 19, 1965 and the three parcels to be taken.

5. Page 53—Special Meeting, Friday, February 19, 1965.
   (a) Pages 53, 54 and 55—copy entire meeting.
6. Page 143—Regular Meeting, May 10, 1965.
   (a) Page 146—copy that part of proceedings in reference to Gas Company and Warner Theatre property.
7. Page 230—Regular Meeting, July 26, 1965.
   (a) Page 236 in re: Moving Expenses.
   (b) Page 237—copy of Petition of J. C. Campopiano.
8. Page 245—Special Meeting, July 30, 1965.
   (a) Page 254—copy proceedings in re: Parking.
   (b) Page 260—copy Petition of J. C. Campopiano objecting.
9. 320—Regular Meeting, October 4, 1965.
   (a) Pages 320 and 321—copy in re: Petition.
10. Page 324—Regular Meeting, October 11, 1965.
   (a) Page 326—copy in re: Contract Awards.
   (b) Page 328—copy proceedings in re: Tax Title.
   (c) Page 328—City Council Meeting.

A. Volume 51, Year 1965 Special
1. Page 343—Special Meeting, Wed., Oct. 27, 1965.
2. Page 349—Reg. Meeting, Nov. 8, 1965.
3. Page 356—Reg. Meeting, Nov. 15, 1965.
4. Page 365—Reg. Meeting, Nov. 22, 1965
5. Page 372—Reg. Meeting, Nov. 29, 1965.
6. Page 381—Reg. Meeting, Dec. 6, 1965.
7. Page 391—Reg. Meeting, Dec. 13, 1965.
8. Page 400—Reg. Meeting, Dec. 20, 1965.
9. Page 411—Reg. Meeting, Dec. 27, 1965.
10. Page 419—Spec. Meeting, Wed., Dec. 29, 1965.
11. Page 422—Spec. Meeting, Dec. 31, 1965.

5. Data Folder in re: Plaintiff's property with pictures containing 15 pages.

6. Loan Order (with six pages) and copy of legal notice
7. Appraisal by Appraisers employed by the Defendant containing 18 pages with charts and photographs.
8. Lis Pendens.
9. Data of expenditures of Loan Order by the City Auditor.
10. Docket entries, in Land Court.
11. Special Stockholders Meeting of Plaintiff Corporation, dated August 1, 1963.
12. Special Stockholders Meeting of Plaintiff Corporation, dated November 1, 1965.

B. Defendants' Exhibits

1. Land Court Tax Lien Case against Campo Corporation, No. 36892, dated February 28, 1967.
2. Final Decree in Tax Lien Case dated December 8, 1967.

DONALD M. MACAULAY
Justice of the Superior Court

Entered: July 31, 1970.

The parties agree that the exhibits mentioned above are all that are material to the issues to be argued before the full court.

JEAN C. CAMPOPIANO
Attorney for Petitioner
MICHAEL J. BATAL
Attorney for Respondents
Assistant City Solicitor

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Supreme Court of the United States.

OCTOBER TERM, 1972.

No. 72-443.

CAMPO CORPORATION ET AL.,
Petitioners,
v.
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

BRIEF OF THE CITY OF LAWRENCE, COMMONWEALTH OF MASSACHUSETTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Jurisdiction.

This petition for writ of certiorari was not filed within 90 days of the date of the entry of the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts on June 14, 1972, and therefore should be denied.

Alleged Questions Presented.

The city of Lawrence contends that there is no question to be presented before this Honorable United States Court

in that the petitioners were not deprived of property without due process of law nor was private property taken for public use without just compensation in violation of article V and article XIV of the amendments of the Constitution of the United States.

Statement of the Case.

The major petitioner is Jean C. Campopiano, an attorney and also major stockholder in Campo Corporation, a Massachusetts corporation which was revived in 1968 after the commencement of this suit against the city of Lawrence *et als.*, on July 14, 1966. The petitioners name the city of Lawrence, a municipal corporation; Daniel P. Kiley, Jr., the then mayor, and Roland F. Deziel, the city treasurer, as respondents.

The city of Lawrence operates under a charter establishing a commission form of government. The said government consists of a mayor and four aldermen who administer, individually, separate municipal departments and constitute the city council.

The respondent Daniel P. Kiley, Jr., was elected mayor to serve a term of two years beginning January 1, 1966, and he succeeded the former mayor, John J. Buckley, who was the mayor during the years covered by the petitioners' bill of complaint.

The petitioners allege to have owned property known as the Capitol Theatre, located at 139 Common Street in the city of Lawrence.

The respondent city of Lawrence on June 1, 1959, brought a petition in the Land Court of Massachusetts to foreclose all rights of redemption from certain tax lien proceedings against the real estate known as the Capitol Theatre, allegedly owned by the petitioners Jean C. Campopiano and Helen D'Errico at that time. This culminated in a decree

of the Land Court of Massachusetts foreclosing the rights of the petitioners, dated December 8, 1967, which was subsequent to the commencement of this bill in equity against the city of Lawrence *et als.*, on July 22, 1966, establishing that there was due the city of Lawrence for taxes approximately $75,045.75.

On or about September 9, 1963, a proposed off-street parking plan, including possible land acquisitions, was submitted to the city of Lawrence for consideration by the local chamber of commerce. The Capitol Theatre parcel, so-called, allegedly owned by the petitioners, was not included therein. As a result, the petitioner Jean C. Campopiano promulgated a petition, signed by certain local residents, which was presented to the city council for its consideration.

The then mayor, John J. Buckley, suggested to the city clerk that the premises be included for consideration with the eight properties theretofore suggested.

Proposals were submitted by Roland R. Siskind and Richard G. Whipple, regarding appraisals of the several properties located in the downtown section which were to be considered for acquisition for off-street parking.

On March 9, 1964, the city council voted to advertise a $600,000 loan for the purpose of acquiring sites for public parking, and in April, 1965, all the sites, with the exception of the Capitol Theatre site, were taken by eminent domain.

The Capitol Theatre property, so-called, was appraised by Roland R. Siskind on October 1, 1964, and he set as a fair cash value the sum of $19,300; on October 20, 1964, Richard G. Whipple's appraisal set a fair cash value of $28,000.

The contents of these appraisals were made known to the petitioner Jean C. Campopiano and, at that time, there was approximately $70,000 in taxes due the city of Lawrence.

There being such a discrepancy between the actual cash value of the property as disclosed by the appraisers and the demand of the petitioners, it was decided by the mayor

and members of the city council that it would be unwise to take the property by eminent domain and thus inherit a land damage petition against the city of Lawrence, as the city was in the process of acquiring title to the property in the Massachusetts Land Court for nonpayment of taxes for the years 1951 to 1966, inclusive.

The master's hearings commenced on June 9, 1969, and witnesses were the former mayor, John J. Buckley; Roland F. Deziel, city treasurer; Joseph R. Smith, city clerk; Roland R. Siskind, appraiser; Richard G. Whipple, appraiser; Charles Lord, one of the assessors of the city of Lawrence; Nicholas J. Callahan, alderman and director of engineering; Vincent P. Foley, alderman and director of public safety; Gerard A. Guilmette, alderman and director of health and charities; and James J. O'Neill, alderman and director of public property and parks, all constituting the city council at the period covered by the bill of complaint; William F. Lucey, secretary and clerk of the Greater Lawrence Chamber of Commerce; Roger Bower, former president of the Greater Lawrence Chamber of Commerce, and the petitioner Jean C. Campopiano.

The master filed a report in which he found for the city of Lawrence *et als.*, on July 24, 1969.

An interlocutory decree confirming the master's report was entered October 3, 1969, and a final decree dismissing the bill was entered July 3, 1970 (Petition, p. 17).

The petitioners filed an appeal to the Supreme Judicial Court of the Commonwealth of Massachusetts on July 20, 1970 (Petition, p. 18) and on June 14, 1972, a rescript opinion was entered by said court affirming the final decree with costs of appeal (Petition, pp. 13-14).

Reasons for Not Granting the Writ.

1. The issue as alleged in this case by the petitioners was not properly raised before the Supreme Judicial Court of the Commonwealth of Massachusetts.

2. There were no improprieties by the city of Lawrence in not exercising its right of eminent domain.

3. The city of Lawrence did not, by any of its actions, destroy the alleged value of the petitioners' property and thus deprive the petitioners of their property rights in violation of the due process clause of the Fifth Amendment.

For these reasons the writ of certiorari should not be granted.

Argument.

The objections of the petitioners to the master's report were essentially argumentative against the conclusions of fact made by the master. There was no request for a summary of the evidence, the evidence was not reported and there was no motion to recommit. The city of Lawrence submits that the findings made by the master were not inconsistent, contradictory or plainly wrong and must be accepted as true. The Supreme Judicial Court of the Commonwealth of Massachusetts so found in its rescript opinion entered June 14, 1972. *Sykes* v. *Smith*, 333 Mass. 560, 565; *Glover* v. *Waltham Laundry Co.*, 235 Mass. 330, 334.

The petitioners' allegations of conspiracy were not substantiated by fact. The city of Lawrence, being a municipal corporation, cannot conspire with any person or persons or be guilty of conspiracy. *Galassi Mosaic & Tile Co.* v. *Boston*, 295 Mass. 544.

The mayor by virtue of his office has no powers to bind the city. *Lawrence* v. *Stratton*, 312 Mass. 517, 521; *Abbott*

v. *Inhabitants of North Andover*, 145 Mass. 484; *Higginson* v. *Fall River*, 226 Mass. 423; *Fluet* v. *Eberhardt*, 294 Mass. 408.

The mere fact that an order borrowing or appropriating the sum of $600,000 for the purpose of taking land by eminent domain was adopted by the mayor and the members of the city council, such borrowing or appropriating being for off-street parking, cannot be construed as authorizing the taking of petitioners' land, known as the Capitol Theatre. *Reed* v. *Springfield*, 258 Mass. 115, 118; *Cayon* v. *Chicopee*, Mass. Adv. Sh. (1971) 1785. The said premises, never having been taken, were definitely excluded from the order of taking by the city of Lawrence.

It would not have been in the best interest of the city of Lawrence to have taken the petitioners' land. By competent and reliable testimony of two appraisers, the fair cash value of the premises was set at $19,300 and $28,000, respectively, and the Massachusetts Land Court decreed that the petitioners owed the city of Lawrence taxes assessed against said premises in the amount of $75,045.75.

The Massachusetts Land Court proceedings, case No. 36892, concerning the premises described in the petitioners' bill of complaint ended with a final decree foreclosing the rights of redemption of Campo Corporation and Helen D'Errico, on December 8, 1967, from which decision no appeal has been taken. At the time of the entry of the final decree by the Massachusetts Land Court, it was decreed that Campo Corportaion owed the city of Lawrence taxes in the amount of $75,045.75.

Under the provisions of Mass. G.L. c. 185, § 1, the Land Court is a court of record and has exclusive jurisdiction over proceedings for foreclosure of and redemption from tax titles under chapter 60, section 64 of said General Laws. *Bell* v. *Eames*, 310 Mass. 642, 645.

The petitioners filed no petition in the Land Court seeking to vacate the decree under the provisions of said Mass. G.L. c. 60, § 69, and therefore title to the property in question, the Capitol Theatre, so-called, is vested in the city of Lawrence as of December 8, 1967.

Conclusion.

The master's finding that the petitioners' lease was intended solely as a device to create a nonexisting value and for use in anticipated dealings with the city of Lawrence must stand, as the Supreme Judicial Court of the Commonwealth of Massachusetts has found that the findings of the master were not mutually inconsistent, contradictory or plainly wrong and must be accepted as true.

Therefore the rescript opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts entered June 14, 1972, should be affirmed and the city of Lawrence *et als.* be allowed their costs.

Respectfully submitted,
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